IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 137 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GARGI STEEL CHEM P.LTD.

Versus

TIRUPATI FOUNDRY PVT.LTD.

Appearance:

1. COMPANY PETITION No. 137 of 1996

MR BIPIN I MEHTA for Petitioner No. 1

MR KM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/02/2002

ORAL JUDGEMENT

This is a petition filed by the supplier of goods to the respondent Company for winding up the respondent Company as the Company has refused to make payment of Rs.1,68,707-61 in spite of service of statutory notice.

2. The petitioner supplied the goods to the respondent - Company under invoices, the particulars of which are given in paragraph 4 of the petition. The goods were supplied between May, 1993 and September, 1994 for an aggregate sale price of Rs.1,88,707-61. It appears that the respondent - Company made part payment to the tune of Rs.20,000/- only leaving the balance amount of Rs.1,68,707-61ps. On account of nonpayment of the said amount, the petitioner served the respondent Company with a statutory notice dated 8-11-1995 which was served upon the respondent - Company but no reply was given by the respondent - Company. Hence the petitioner filed the present petition on 12-7-1996.

3. In spite of issuance of notice, the respondent Company did not file any reply. By order dated 25-9-1996, this Court admitted the petition and also passed the order for publication of notices through newspaper advertisements. Affidavit of compliance of that order has already been filed. The petition is, therefore, listed for final hearing.

4. In spite of several opportunities made available to the respondent - Company, no affidavit in reply has been filed. The Court, therefore, proceeds on the footing that the averments made in the petition are admitted and that the respondent - Company owes the petitioner a sum of Rs.1,68,707-71ps. as on the date of winding up i.e. in July, 1996.

5. In view of the admitted failure of the respondent - Company to make payment of the aforesaid amount to the petitioning creditor, it must be held that the respondent - Company is unable to pay its debts. It is also an admitted position that the respondent - Company has stopped manufacturing operations and the factory of the respondent - Company is closed since September, 1997. In this view of the matter also, there is full justification for passing the order of winding up under the provisions of Section 433 read with Section 434 of the Companies Act, 1956.

6. In view of the above discussion, M/s. Tirupati Foundry Private Limited, Baroda is ordered to be wound up. The Official Liquidator attached to this Court shall take over possession of all the assets of the respondent Company and shall prepare an inventory and valuation report of the assets of the Company.

7. The petition is allowed and accordingly stands

disposed of.

(M.S. Shah,J)

zgs/-